

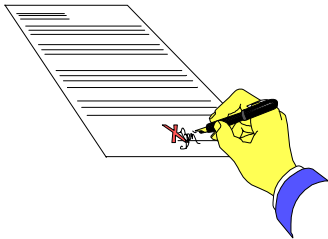
R.I. TAX NEWS

DIVISION OF TAXATION
A NEWSLETTER FOR TAXPAYERS AND THEIR PRACTITIONERS
R. GARY CLARK, TAX ADMINISTRATOR

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TAX HIGHLIGHTS OF THE 2002 LEGISLATIVE SESSIONS



Sales/Use Tax

02-S 2522A (PL 02-110) – This act provides for the establishment of so-called “municipal economic development zones,” (MED zones). Retailers engaging in qualifying sales which are located in newly constructed businesses within a MED Zone will be permitted to collect only fifty percent (50%) of the current sales and use tax for a period of ten (10) years.

02-H 7873 (PL 02-337) – This act extends the current exemption for commercial fishing vessels by exempting supplies and materials used in the maintenance and/or repair of the vessels.

02-H 7732A Art. 16 §7 (PL 02-65) – This act adopts the provisions of the federal Mobile Telecommunications Sourcing Act (PL 106-252) relating to the sourcing of charges for mobile telecommunications. The act is applicable to charges reflected on customer bills issued after August 1, 2002.

02-S 2553A (PL 02-404) – This act amends the definition of farm vehicles and changes the requirements for tax-free registration of farm vehicles.

Personal Income Tax

02-H 6918A (PL 02- 215) – This act provides for the establishment of medical savings accounts by the Town of Scituate or a resident of that town. An account holder whose account consists solely of his/her own funds and no funds from an employer, shall be entitled to a tax credit of \$200 in each year the account holder makes the maximum contribution to his/her account.

02-H 7732A Art. 16 §6 (PL 02-65) – This act limits a net operating loss under the personal income tax to the extent that a NOL may not be carried back but shall only be allowable on a carry forward basis for the number of succeeding taxable years allowed under section 172 of the IRC [26 U.S.C.].

02-H 7732A Art 16 §4 (PL 02-65) - This act provides that the five (5) year carry back provision of a net operating loss provided by the Job Creation and Worker Assistance Act of 2002 (PL 107-147) for federal tax purposes shall not be allowed for Rhode Island tax purposes.

02-H 7732A Art 9 (PL 02-65) – This act provides for a modification reducing a taxpayer’s federal adjusted gross income for Rhode Island purposes for contributions made to a 529 account under a tuition savings program. The modification shall not exceed \$500 or \$1,000 (single or joint filer) per return, per year.

Tax Credits

02-H 8199A (PL 02-265) – This act repeals the section of the investment tax credit relating to the credit for film production in Rhode Island and enacts a separate, stand-alone tax credit for film production in this state. This new stand-alone credit shall be in lieu of any tax credit allowable under the investment tax credit.

02-S 2860B (PL 02-125) – This act makes several changes to the current tax credit for historic structures, including definitional changes. It also provides that substantial rehabilitation expenditures incurred prior to January 1, 2002 but not earlier than January 1, 2000, may be included in the calculation of the tax credit.

Cigarette Tax

02-H 7732A Art 16 §11 (PL 02-65) – This act increases the cigarette tax rate from fifty (50) mills per cigarette to sixty-six (66) mills per cigarette. It also provides for additional increases of nine (9) mills per cigarette on July 1, 2003 and five (5) mills per cigarette on July 1, 2004 and each July 1, thereafter through July 1, 2008.

Gasoline Tax

02-H 7732A Art 29 (PL 02-65) – This act increases the tax on motor fuel from \$0.28 to \$0.30 effective July 1, 2002.

Realty Transfer Tax

02-H 7732A Art 16 §12 (PL 02-65) – This act increases the tax on transfer of realty as evidenced by documentary stamps from \$1.40 per \$500 or fractional part of the purchase price to \$2.00 per \$500 or fractional part of the purchase price.

Surplus Lines Insurance Tax

02-H 7732A Art 16 §1 (PL 02-65) – This act makes

an insured liable for the three percent (3%) gross premiums tax on surplus lines insurance if the insured procures/renews a surplus lines insurance coverage with an insurer not licensed in this state.

Estate Tax

02-H 7732A Art 16 §2 (PL 02-65) – This act provides that any scheduled increase in the unified credit provided by 26 USC §2010 in effect on January 1, 2002, or thereafter, shall not apply for Rhode Island purposes.

Net Operating Loss/Depreciation of Assets

02-H 7732A Art 16 §3 (PL 02-65) – This act provides that for depreciation of assets under Chapters 11, 14 and 30 of Title 44, the bonus depreciation provided by the Job Creation and Worker Assistance Act of 2002 (PL 107-147) for federal tax purposes shall not be allowed for Rhode Island tax purposes.

Public Service Corporation Tax

02-H 7732 Art 16 §8 (PL 02-65) – This act provides that for purposes of apportioning gross earnings under the public service corporation tax, gross earnings from mobile telecommunications services shall be apportioned to the state where the customer's primary place of use occurs, as determined in accordance with the federal Mobile Telecommunications Sourcing Act.

Miscellaneous Surcharge Provisions

02-H 8207 (PL 02-424) – This act imposes a surcharge of five percent (5%) on transient parking receipts within a defined Warwick airport parking district.

02-H 7732A Art 16 §10 (PL 02-65) – This act increases the number of rental days (ten day to thirty) which are subject to the six percent (6%) surcharge on the rental of motor vehicles.

RENTAL OF PUBLIC ROOMS

Generally the rental of public rooms (i.e., meeting rooms, ballrooms, etc.) for group meetings, display purposes, dances or similar events is not subject to tax. However, these charges may be subject to sales/use tax as follows:

- a. If a customer rents a room in conjunction with the serving of a meal (wedding, banquets, or similar events) and the meal is provided by the operator/owner of the room, the charge for the room whether or not separately stated, is treated as an other charge for the furnishing, preparing or serving of the meal and is included in the sales price of the meal.
- b. If a customer rents a room for purposes other than the serving of meals and there is an incidental serving of light refreshments by the operator/owner of the room for an additional charge, the sales tax applies only to the sales price of the refreshments, if the charge for the refreshments is separately stated on both the records of the vendor and the bill to the customer. If the charges are not separately stated, the entire amount charged is subject to the sales tax.
- c. If more than one meeting room has been rented for use at the same function, with one room being used for the serving of meals and another room being used for the meeting; the facility's separately stated and reasonable charge (based on prevailing rates in the area) for the room not used for the serving of meals is not treated as charges for the meals, and is not subject to sales and use taxes. If the charge for the room being used for the meeting is neither separately stated nor reasonable, the facility's total charges are treated as charges for the meals, and are subject to sales and use taxes.

See Regulation SU 02-97, effective March 1, 2002.

RHODE ISLAND ADOPTS THE MTSA

The federal Mobile Telecommunication Sourcing Act ("MTSA") PL 106-252, became law on July 28, 2000. It required every state subjecting mobile telecommunications to transactional taxes to amend its laws to conform to standardized sourcing rules by August 1, 2002. Article 16, Section 7 of the budget bill, H-02-7732A, adopted the provisions of the MTSA for purposes of the Rhode Island sales and use tax effective August 2, 2002.

Under the law mobile telecommunications services that are deemed to be provided by the customer's home service provider are subject to tax if the customer's place of primary use is in Rhode Island regardless of where the mobile telecommunications services originate, terminate, or pass through. The customer's "place of primary use" means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer and which must be located in the service provider's licensed service area. The jurisdiction in which the primary use is located is the only jurisdiction that may tax the communications services, regardless of the customer's location when an actual call is placed or received. "Customer" means either a person or entity that contracts with a home service provider for mobile telecommunications services or, if the end user of mobile telecommunications services is not the contracting party, the end user of the mobile telecommunications service (but only for the purpose of determining the place of primary use). A customer does not include a reseller of mobile telecommunications services or a serving carrier that is under an arrangement to serve the customer outside the home service provider's licensed service area. "Home service provider" means a facilities-based carrier or reseller with the customer contracts for the provision of mobile telecommunications services.



COURT CASES

**Lincoln v. Pelletier, CA
#00-0818, District Court,**

Third Division, Cenerini, J. (Feb. 2002)

The issue before the court was whether a judgment creditor may satisfy its judgment by attaching a judgment debtor's income tax refund.

The court held that in Rhode Island, the doctrine of sovereign immunity bars the plaintiffs' garnishment action against the state. Citing case law, the court stated that the plaintiffs may not attach the defendants' income tax refund as long as such funds remain in the disbursing office of the state.

21 International Holdings, Inc., et al v. Clark, AA 97-11, Gonnella, J. (June 2002)

This matter was before the District Court regarding a partial disallowance of a claim for a tax refund under the business corporation tax. The issues centered on the ability of the taxpayers' to join in the filing of a consolidated return and whether the taxpayers could include in their net income calculations their proportionate share of property, receipts and payroll factors received from a related partnership. The court held that unlike the case of Homart Development Co. v. Norberg, 529 A.2d 115 (RI 1987), where failure to include these factors in the return produced a distorted apportionment of the corporation's entire income, in this case the inclusion of the factors would produce a distortion. Under these circumstances, the court stated that the taxpayers had not met their burden for relief.

As to the taxpayers' ability to join in a filing of a consolidated return, the court held that under the set of facts of the case, the tax administrator lacked the power to deny the filing of a consolidated return.

BILLBOARDS & SIGNS

The regulation relating to billboards & signs was recently amended by adding language to clarify the situation when a sign company is required to pay a tax on its purchase of materials and supplies. The pertinent part of the regulation is as follows with the amended (new) language underlined.

All signs which are fabricated by a sign company, whether they are completely fabricated prior to reaching the job site, or whether they are fabricated at the job site, or whether they are fabricated partially in the sign company" shop and partially at the job site, are considered as improvements to real property, provided that they are affixed by the sign company to the real estate in a permanent manner. The sign company in this situation is operating as a contractor and not as a retailer and is required to pay sales or use tax as a consumer on the purchase of materials and supplies.

See Regulation SU 02-08, effective February 1, 2002.

NURSING, CONVALESCENT & HOMES FOR THE ELDERLY

The regulation pertaining to the Rhode Island sales and use tax exemption for charges made by homes for the aged and convalescents licensed by Rhode Island was recently amended to include assisted living facilities that have in constant attendance at least one registered or practical nurse. The exemption applies to charges for meals, rooms, and other services that are comparable to services rendered by hospitals such as the furnishing of nursing care, supervision, custodial care, administering of special treatments or medications as prescribed by physicians, and the supplying of special diets.

See Regulation SU 02-03, eff. February 1, 2002.